

Atty. Dkt. No. P58317US2

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In re patent application of:

Jim APPINO et al.

Serial No.: 08/865,044

Art Unit: 1615

Filed: May 29, 1997

Examiner: R. Bawa

Title: DEVICE FOR DISPENSING A THERAPEUTIC OR COSMETIC SUBSTANCE,
THE INERT VEHICLE OF WHICH IS A VOLATILE POLYDIORGANOSILOXANE,
AND COMPOSITION INTENDED TO BE USED IN THE DEVICE

REQUEST UNDER MPEP 201.06(b)
FOR NOTICE TO FILE MISSING PARTS AND
WITHDRAWAL OF OFFICE ACTION

Assistant Commissioner of Patents
Washington, D.C. 20231

Sir:

Applicants request that the USPTO issue a Notice to file Missing Parts and withdraw the Office action mailed July 14, 2000, since the Office action is premature.

In accordance with MPEP 201.06(d)(*emphasis, added*):

Where a general authorization to charge fees to a deposit account was filed in the prior application and applicant desires to file a CPA without paying the filing fee on the filing date of the application, applicant may file the CPA with specific instructions revoking the general authorization filed in the prior application.

Where . . . the basic filing fee is insufficient or has been omitted, *applicant will be so notified by the patent examining group and given a period of time in which to file the missing fee* and to pay the surcharge. . . . A CPA will not be placed upon the files for examination until all of its required parts, including the filing fee and surcharge, if necessary, are received. . . . Thus, *it would be inappropriate . . . to issue an action on the merits in the CPA until the filing fee and surcharge, if necessary, are received.*

Serial No.: 08/865,044
Atty. Docket No.: P58317US2

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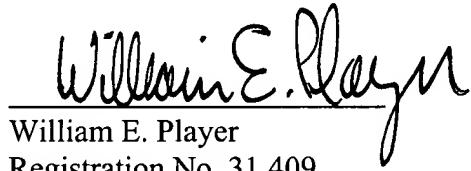
The Office action was issued on a CPA filed November 22, 1999, without payment of the filing fee. The CPA expressly provided:

This application is filed under Rule 53(f) and, therefore, the Filing Fee is not enclosed and any previous general authorization to charge fees under 37 C.F.R. 1.16 to Deposit Account No. 06-1358 is revoked.

Since the filing fee for the instant CPA has not been paid, and any general authorization to charge a deposit account was expressly "revoked," applicant should have been "given a period of time in which to file the missing fee" and it was "inappropriate . . . to issue an action on the merits in the CPA." MPEP 201.06(b).

Favorable action commensurate with the foregoing is requested.

Respectfully submitted,



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